



PROFFER STATEMENT
W. ROBERT GAINES, TRUSTEE
RZ 03-S-17
March 12, 2004
Revised March 15, 2004
Revised April 8, 2004

This proffer statement is submitted pursuant to the authority of the Code of Virginia and the Fauquier County Zoning Ordinance ("Ordinance") by the Owner and the Applicant of the area of real property containing approximately 62.89 acres (PIN #7916-22-4949-000 and PIN #7916-12-8941-000), Scott Magisterial District, Fauquier County, Virginia which is described and referenced in the referenced rezoning application and materials filed with Fauquier County. Further, the Owner and the Applicant, their successors and assigns hereby proffer that in the event that the Board of Supervisors of Fauquier County ("Board") approves the subject application to rezone the Property (PIN #7916-22-4949-000) which encompasses approximately 31.47 acres and PIN # 7916-12-8941-000 which encompasses approximately 31.42 acres (together the "Property") from the C-1 District and R-1 District to the R-4 District and C-1 District. The development of the Property will be in accord with the regulations of the R-4 District and C-1 District and the proffers contained herein.

In the event the above referenced rezoning is not granted as applied for by the applicant ("Applicant"), these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "final rezoning" defined as that rezoning which is in effect on the day following the last day upon which the Fauquier County Board of Supervisors (the "Board") decision granting the rezoning may be contested, and the Applicant elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Board which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal. If this application is denied by the Board, but in the event an appeal is for any reason thereafter remanded to the Board for reconsideration by a court of competent jurisdiction, then these proffers shall be deemed withdrawn unless the Applicant shall affirmatively readopt all or any portion hereof, in writing specifically for that purpose. The heading of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein.

The term "Applicant" as referenced herein shall include within its meaning all future owners and successors in interest. When use in these proffers, the "Concept Development Plan" shall refer to the plan entitled "Concept Development Plan," prepared by Greenhorne & O'Mara, Inc. dated July 30, 2002 and as revised to February 12, 2004 (the "GDP").

LAND USE

1. The proposed residential development shall be in general conformance with the Concept Development Plan ("CDP"), provided that the Applicant may make design modifications as required during final engineering to address existing and future utility locations (including the proposed New Baltimore Sanitary Sewer Pump station and related appurtenances), transportation improvements, open space access and uses and stormwater management requirements, final determination of the 100-year floodplain, and similar requirements applicable on such final engineering.
2. The residential development shall not exceed 123 residential units. These 123 residential units shall be a combination of Single-Family Detached Units (± 46 SFD), Single-Family Attached Units (± 77 SFA). In addition, the Applicant may elect to develop up to ± 20 Apartments in the retail portion of the proposed development, subject to compliance with applicable provisions of the Zoning Ordinance in effect at the time of approval of these Apartments. The actual number of SFD and SFA may vary between unit types by as many as 15 units; however, the total number of residential units shall not exceed the aforesaid 123 units and 20 apartments, respectively. The projected residential density shall be 1.95 du/ac., with a maximum development density (if apartments are constructed) of 2.27 du/ac. Such density shall be calculated on the basis of the gross acreage of the subject property.
3. The sixteen conventional single-family lots proposed on the east side of Riley Road (in the area zoned R-1 and designated for "low density residential" uses) shall have a density of less than 1 du./ac. and an average lot size of approximately 25,000 square feet.
4. The remaining 9.14 acres currently zoned C-1, shall be developed with a combination of commercial and retail uses (up to 65,000 square feet) and the aforesaid apartment units. Such apartment units shall be located over the commercial uses, shall be limited to 1 ½ stories, restricted to one bedroom units with lofts and have residential architectural features consistent with the "Town Center Mixed Use Complex dated February 1, 2004, a copy which is attached hereto and incorporated herein by reference. Further, nothing in this proffer statement shall limit or restrict the Applicant from any additional zoning/code modifications, architectural design and engineering flexibility for the commercial uses and apartments as may be approved in a subsequent Special Exception approved by the Board of Supervisors, for these uses. In addition, the following commercial uses shall be prohibited on the subject property:
 - a. Auto repair garage

- b. Car wash
- c. Motor vehicle impoundment yard
- d. Automobile sales
- e. Broadcasting studio
- f. Recreational vehicle storage area
- g. Kennel/animal shelter
- h. Funeral home
- i. Recycling center

OPEN SPACE

1. The proposed R-4 community will provide not less than 15% open space for that portion of the community developed as a "conventional layout," and not less than 50% open space for that portion developed as a "cluster layout". Open space areas shall include all common areas, property conveyed for the proposed New Baltimore Fire and Rescue Facility, property utilized by the Fauquier County Water and Sanitation Authority for the New Baltimore Sanitary Sewer Pump Station and related appurtenances, property dedicated for the relocated New Baltimore Waste Transfer/Recycle Center and any property owned by the Fauquier County School Division and used in connection with C. Hunter Ritchie School that may be vacated by the School Board.
2. Applicant shall provide a 50 foot undisturbed buffer along the Property's eastern boundary between lots 9 and 22. Prior to final subdivision design, Applicant shall inventory the existing vegetation within this buffer and , if determined appropriate by the County, provide additional plantings in accordance with the County's tree cover requirements. Further, other than maintenance and removal of dead, disease and noxious plants (i.e., poison oak/poison ivy) this buffer area shall not be disturb. To insure this area is protected, this restriction shall be incorporated in the HOA documents.
3. At the time of recordation of the subdivision/site plans for the Property the Applicant shall convey all open space areas to a homeowners' association created for ownership and maintenance of common areas; except for those areas previously identified herein to be dedicated to Fauquier County, VDOT or WSA.

ENVIRONMENT

1. The Applicant shall protect the 100-year floodplain (as determined by the G&O Floodplain Study and finally approved by FEMA) and said area shall not be disturbed except for the installation of trails, utility lines and

related public improvements. No residential structures shall be located within the 100-year floodplain as modified and approved by FEMA.

2. The Applicant shall not disturb the existing VDOT wetland bank. In addition, Applicant shall provide vehicle access to said wetland bank and install a fence with a lockable gate as jointly approved by VDOT and the Applicant. Further, Applicant shall, in cooperation with VDOT, coordinate the design and implementation of a landscape buffer along the southern edge of the referenced wetland.
3. Applicant shall obtain a Type I Soil Report from the Fauquier County Soil Scientist Office to be used in the design of this project.
4. The Applicant shall provide a SWM/BMP facility outside the G&O designated 100-year floodplain, as the location of that floodplain may be modified and approved by FEMA, and shall further accommodate the off-site runoff currently being provided on-site by an existing VDOT SWM facility.

ARCHITECTURAL ELEVATIONS AND LANDSCAPING

1. The residential lots fronting onto Riley Road shall be in general conformance with the building elevations and typical landscaping concepts as depicted on the Concept Development Plan and in the Bishops Run information booklet dated March 8, 2004. Said landscaping may be modified in order to maintain consistency with WSA guidelines for planting within its existing utility easement along Riley Road. Further, these lots shall have their access from the rear with no direct access to Riley Road.
2. The remaining residential lots at Bishops Run shall be in general conformance with the building elevations and typical landscaping concepts as depicted on the Concept Development Plan and in the Bishops Run information booklet dated March 8, 2004.
3. If approved by VDOT through its land use permit process, a ± 20 -foot landscape buffer shall be provided in the existing Riley Road right-of-way along both sides of the residential development frontage of Riley Road. Said landscaping shall be consistent with VDOT's requirements as promulgated in its "Guidelines For Planting Along Virginia's Roadways". Further, except as permitted herein for utilities, trails and related public improvements, Applicant shall not disturb the existing natural areas which are outside the residential development frontages along Riley Road.

TRAILS/RECREATION

1. The Applicant shall provide a 5-foot sidewalk or a 6-foot asphalt trail within the VDOT right-of-way along the Property's "development" frontage (both sides) of Riley Road (within areas outside the 100-year floodplain). The specific pedestrian facility will be determined at the time of Final Site/Subdivision Plan design. In addition, Applicant shall provide a 6-foot "natural trail" through the 100-year floodplain and across the existing stream using a "low-water" bridge to the Active Recreational Area, as generally depicted on the CDP.
2. The Applicant shall provide a ± 3 -acre Active Recreational Area for the proposed residential community, generally in the location noted on the CDP. The active recreational facilities provided at said site may include, but shall not be limited to, play apparatus equipment, picnicking areas and outdoor game/sport field facilities.

TRANSPORTATION

1. The Applicant will coordinate with VDOT in the design of and will construct right-turn and left-turn lanes at the Property's entrances onto Riley Road in accordance with VDOT standards.
2. The Applicant will coordinate with Fauquier County and VDOT to design and construct aesthetic enhancement and pedestrian facilities along Riley Road as may be approved by VDOT. Such measures may include, but not be limited to, tree plantings/landscaping, "stamp pavers", signage and other intermodal transportation features in accordance with VDOT standards.
3. Within 30 days following approval of the first final site/subdivision plan for the Property, the Applicant shall contribute the sum of \$25,000 to Fauquier County for the installation of future a traffic signal at Route 676 and Route 29 intersection.
4. The Applicant shall make a cash payment of \$1,200 per single family detached and attached dwelling unit at the time of issuance of the building permit for each such residential unit after the 27th residential unit building permit shall have been issued. In addition, Applicant shall also contribute \$0.50 per square foot of commercial and apartment space proposed for the neighborhood retail center, at the time of issuance of the building permit, based upon the square footage approved on any final site plan. These

funds shall be placed in the "New Baltimore Transportation Escrow Fund" and applied to transportation improvements for the New Baltimore Service District as determined by VDOT and the Director of Community Development or such other agent as the Board of Supervisors may direct, at the time of said contribution.

6. The Applicant shall, at the time of final site plan/subdivision approval for the major Carriage Home Land Bay, make provision to construct and dedicate a 50-foot public right-of-way to the common property line of the adjacent parcel to the west (i.e., PIN# 7916-12-2141). All HOA documents and commercial leases shall identify this right-of-way as a future public collector road.

PUBLIC SERVICES CONTRIBUTION

1. The Applicant shall make a cash payment to Fauquier County of \$14,730.00 per single family detached and attached dwelling unit, except as otherwise provided with respect to purchase of development rights as set forth in the next section of these proffers, at the time of issuance of the building permit for each residential unit after the 27th residential unit building permit shall have been issued.

PDR PROGRAM CONTRIBUTIONS

1. Within 30 days following approval of the first final residential subdivision plan for the project, the Applicant shall contribute \$55,000.00 (i.e., \$500x110 units) to Fauquier County for use in conjunction with its countywide program for purchasing development rights ("PDRs").
2. In addition to the foregoing, the Applicant shall make a contribution of \$15,230.00 for each single family residential unit above 110 residential units, to be applied to the purchase of development rights in Fauquier County as further provided herein.
 - a. Prior to the issuance of the 111th residential building permit for the Property, the Applicant shall endeavor in good faith to acquire such development rights as may be reasonably available in the marketplace, expending not more than the amount proffered herein.
 - b. For the purposes of this proffer, a purchased development right shall consist of one right to construct a residential unit on other property, as calculated by the Director of Community Development, on any property within the general vicinity of the

Property as may be deemed acceptable by the County. The seller of such development right shall consent to the imposition of a recorded easement or covenant restricting the use of such development right, in a form satisfactory to the County Attorney.

- c. The Applicant shall make a further contribution of \$4,750.00 for each apartment that may be authorized and constructed at the Bishops Run retail center, to be applied to the purchase of development rights in Fauquier County. Payment of said monies shall be made to Fauquier County at the time of issuance of occupancy permit for each apartment.
- d. In the event that the Applicant has not been able successfully to purchase the maximum number of development rights that can be obtained with the monies proffered hereby, by the time of the issuance of the 111th residential building permit, then the Applicant shall pay the sum of \$20,000.00 per single family residential unit to the Board of Supervisors for use in the County's purchase of development rights program.

NEW BALTIMORE FIRE & RESCUE

- 1. Within 30 days following approval of the first final site/subdivision plan for the Property, the Applicant shall dedicate approximately 3 acres as depicted on the CDP, to the Board of Supervisors for a new New Baltimore Fire & Rescue facility. Applicant shall receive a credit (against its \$14,730.00 per lot contribution otherwise provided for herein) at the property's assessed real estate value, at the time of said dedication.
- 2. The Applicant shall, at the time of the first final site plan/subdivision approval for the Property, make provision to construct a water line and fire hydrant in accordance with Fauquier County Water and Sanitation Authority ("WSA") standards, to the common property line of the referenced New Baltimore Fire & Rescue site. Applicant shall not receive any credit (against its \$14,730.00 per lot contribution otherwise provided for herein) for this construction service.
- 3. The Applicant shall, at the time of the first final site plan/subdivision approval for the Property, make provision to construct a sanitary sewer line in accordance with Fauquier County Water and Sanitation Authority ("WSA") standards, to the common property line of the referenced New Baltimore Fire & Rescue site. Applicant shall not receive any credit (against its \$14,730.00 per lot contribution otherwise provided for herein) for this construction service.

4. The Applicant shall, at the time of the first final site plan/subdivision approval for the Property, make provision to clear and rough grade the pad site for the construction of the New Baltimore Fire and Rescue Station proffered herein. Included in this effort will be erosion and sedimentation control for lot grading and future storm water management for the finished Fire & Rescue Facility. Applicant shall not receive any credit (against its \$14,730.00 per lot contribution otherwise provided for herein) for this construction service.

WASTE TRANSFER/RECYCLE CENTER

1. Within 30 days following approval of the first final residential subdivision plan for the project, the Applicant shall dedicate a site for the relocation of the existing New Baltimore Waste Transfer/Recycle Center at either Bishops Run, the Cross Creek Retail Center ("Cross Creek"), or at another site in New Baltimore owned or controlled by the Applicant. Said location shall be mutually agreed upon by Applicant and Fauquier County. Any such facility shall be designed and constructed by others, and that design and construction shall mitigate any adverse visual and environmental impacts to the Bishops Run project, the Cross Creek project or any other designated site and surrounding properties.

FAUQUIER COUNTY WATER AND SANITATION AUTHORITY

1. Prior to the issuance of the first building permit for any use on the property, and in cooperation with the WSA, the Applicant shall design and construct, in conformance with the WSA's Utility Standards and all other applicable laws and regulations, a 12-inch potable water main from the current terminus of the WSA's water system on Shepardstown Road to the intersection of Broad Run Church Road and Riley Road. Applicant shall not receive any credit (against its \$14,730.00 per lot contribution otherwise provided for herein) for this construction service. However, Applicant shall receive a WSA credit for this construction service in an amount equal to the construction cost as agreed upon by the Applicant and WSA.

DEVELOPMENT PHASING

1. Final build-out of the single family residential portion of the Property will not occur in less than four (4) years from date of rezoning approval or three (3) years after final subdivision plan approval.

SIGNATURES APPEAR ON FOLLOWING PAGE.

W. Robert Gaines, Trustee
Property Owner

Date

Angler Development, LLC
Steve Vento, Vice President

Date

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